

## Section 4(f) Analysis and Findings

### Introduction

The following sentences outline the specific codes that placed Section 4(f) into law and the regulations that were set to implement Section 4(f): This project is an action that is subject to Section 4(f) of the U.S. Department of Transportation Act of 1966 (49 United States Code 303) and 23 United States Code 138. The regulation implementing the law is found in 23 Code of Federal Regulations 774 (23 CFR 774). In more simple terms, the reason these federal code and regulation are listed is to provide a reference should someone want to read the full set of regulations.

The essence of Section 4(f) is to protect publicly owned parklands, recreation areas, waterfowl and wildlife refuges, and significant historic sites from impacts caused by projects proposed by a transportation agency.

The following introductory paragraphs explain why Section 4(f) applies to this project, when the provisions are triggered, and what findings are made in accordance to this regulation.

This paragraph explains why Section 4(f) applies. In order for Section 4(f) to apply to a project, the project proponent must be a transportation agency under the umbrella of the United States Department of Transportation (U.S. DOT), and a portion of the project must be financed by federal funds that are provided by either the Federal Highway Administration (FHWA) or the Federal Transit Authority. Section 4(f) applies to this project because a portion of the project is financed by FHWA federal-aid funds and the project is proposed by Caltrans (i.e. transportation agency that has assigned NEPA responsibilities from the U.S. DOT).

Once determined that Section 4(f) applies to a transportation project, the next step is to identify all of the Section 4(f) properties within or adjacent to the study limits. Again, these properties are publicly owned parks, recreational areas, wildlife refuges, or historic sites. However, Section 4(f) only applies to historic sites that are on the National Register, or determined eligible to be listed on the National Register, regardless if the historic site is on public land or privately owned land. After the Section 4(f) properties are identified, the following step is to determine if a “use” has occurred to the properties or lands protected by Section 4(f).

The provisions Section 4(f) are triggered when a transportation project will “use” a Section 4(f) resource. When Section 4(f) applies to a project is a little more difficult to describe because the regulation specifically refers to the term “use” to explain when the

provisions are triggered. The Section 4(f) regulation explicitly defines when a “use” of land occurs from a publicly-owned park, recreation area, wildlife refuge, or historic site. Basically, a “use” occurs one of three ways: (1) land is permanently incorporated into a transportation facility (i.e. through the purchase of right-of-way), (2) a “use” occurs when one of the five criteria cannot be met for temporary occupancy, (3) constructive use. A constructive use rarely occurs, and is not applicable to this project, so there is no further discussion on this type of “use”.

The Section 4(f) provisions have been triggered because it has been determined that a “use” will occur due to the action of acquiring permanent easements from land that has been identified as publicly-owned, and functions primarily for recreational purposes. The purchase of right-of-way, which includes a permanent easement, is an everlasting incorporation of recreational land into a transportation facility.

In addition, there will be temporary occupancy onto publicly-owned, recreational land; however, this is not considered as a “use” under the regulations because the five criteria can be met for temporary occupancy. The following pages explain how these criteria have been met for temporary occupancy to be considered as not a “use” under Section 4(f).

This section of the environmental document discusses what resources are considered as properties under Section 4(f), where these properties are in relation to the limits of the project, how these properties are affected, examines the applicability or non-applicability of Section 4(f), and explains the findings made to comply with the regulations of Section 4(f).

The responsibility for these Section 4(f) is part of its NEPA assignment of Federal responsibilities by the Federal Highway Administration (FHWA) effective, October 1, 2012.

## **Description of Proposed Project**

This project proposes to retrofit Segment 3 (from Cascade Road to Upper Emerald Bay Road) with water quality improvements to meet the Lahontan Regional Water Quality Control Board’s NPDES stormwater permit conditions and the Tahoe Regional Planning Agency’s (TRPA) Lake Tahoe Environmental Improvement Program (EIP) requirements. The NPDES permit requires on-site disposal of stormwater runoff generated by the 20-year one-hour storm or, where this is not feasible, treatment before discharge. The EIP program helps direct design features and construction practices that will meet environmental goals (thresholds) that protect the natural environment and to maintain public health and safety within the Region. Threshold criteria are listed under eight categories: water quality, soil conservation, air quality, vegetation, wildlife, scenic resources and community design, recreation, and noise. Coordinating project

design with these agencies will ensure that this project will achieve compliance with these requirements.

To meet water quality improvement objectives, State Route 89 will be retrofitted with collection and conveyance structures, pollution prevention and erosion control features, and treatment devices. The primary purpose of this project is to treat storm water runoff from the impervious surfaces of the existing roadway. These improvements will reduce the discharge of sediment (including dust emissions), nitrogen, and phosphorus, constituents that are believed to be contributing to impairment of Lake Tahoe's clarity. Conveyance improvements include both new drainage systems and rehabilitation of existing facilities, removing asphalt concrete (AC) dike and replacing with Portland concrete cement (PCC) Curb, various digouts (0.35' depth), and remove and replace 0.20' AC surfacing throughout the project limits. Pollution prevention and erosion control features include installation of use of rock slope protection, rock energy dissipaters, and rock-lined ditches to control erosion in areas that may experience concentrated flows. Additional erosion control include the following: paved turnouts and one maintenance vehicle pullout, slope stabilization, and slope revegetation. Treatment will be accomplished by maintaining or developing sheetflow conditions at the edge of shoulders for runoff infiltration and pollutant interception and by installing traction sand traps at most existing cross culvert locations and at locations where runoff will discharge to an off-site conveyance channel. Through application of upgraded drainage systems throughout the project, the project design intends to minimize discharge of runoff off-site.

#### **Identified Section 4(f) Properties**

There are two, publicly-owned, officially designated recreational areas identified adjacent to State Route 89 within the project limits. Emerald Bay State Park and the Emerald Bay Management Area are the two recreational areas. Emerald Bay State Park and the Emerald Bay Management Area are considered as Section 4(f) properties because the properties are formally designated, managed, and operated as recreational areas; open to the public; owned by the public; and the properties are considered as "significant" under the terms of the Section 4(f) regulations because the land is managed to serve as an important role to provide the public the opportunity for recreational enjoyment.

Emerald Bay State Park is administered by the California Department of Parks and Recreation (referred to as State Parks). Some of the major features within the boundaries of Emerald Bay State Park include Eagle Point Campground, Eagle Falls Picnic Area, the Rubicon Trail, Vikingsholm historic estate, Emerald Bay Underwater Park, and Fannette Island. Emerald Bay State Park could be referred to as either a publicly-owned park or a publicly-owned recreation area. Regardless of how the land is

referenced, as either a park or a recreational area, the Section 4(f) process does not differ between the two terms.

Emerald Bay Management Area is administered by the United States Forest Service (referred to as the Forest Service). Emerald Bay Management Area encompasses 2,703-acres as part of the national forest system. Some of the recreational features within the vicinity of the project limits include Bayview Campground, Bayview Trail, Eagle Falls Trail, Eagle Falls Picnic Area, and the Inspiration Point Vista Point.

A unit within the Forest Service called the Lake Tahoe Basin Management Unit developed a document titled “Land and Resource Management Plan” (i.e. Forest Plan) for the management of 5,789-acres collectively called the Emerald Bay Management Area. This management plan identifies a majority of the acres (approximately 917-acres) within Emerald Bay Management Area as “developed recreation” or “intensive dispersed recreation”. This Forest Plan was used as a reference to discern if the forest land was managed for purposes other than recreational. Since most of the water quality improvements and drainage facilities would be installed on the land within the management plan identified and designated as recreational, these areas are considered and treated as a Section 4(f) property.

### **Analysis of Project Effects to Section 4(f) Properties**

This discussion describes the Section 4(f) property, lists some of the activities, features, and attributes that comprise the Section 4(f) property, assesses the impacts, identifies any avoidance, minimization, or mitigation measures, and discloses the findings that were made under Section 4(f).

The analysis of effects to Section 4(f) properties follows the progress of the project from where the project begins at postmile (PM) 13.8 to where the project ends at postmile (PM) 18.0. The reader is recommended to refer to the Environmental Study Limit Sheets (ESL) as a visual-aid to supplement some of the descriptions to provide more clarity since some of the areas are difficult to describe in precise details.

Emerald Bay State Park is examined first because this property coincides with the numeric order of the layouts sheets. The reader should refer to ESL-6 for Eagle Point Campground, and ESL-12 through ESL-15 for Eagle Falls Picnic Area and Emerald Bay State Park. These recreational areas are inclusive within the Emerald Bay State Park boundaries.

## **Emerald Bay State Park (State Parks)**

**Property:** The project is located on State Route (SR) 89 inside the Emerald Bay State Park. This 1,533-acre State Park is located along Lake Tahoe's west shore. Purchased by the State of California in 1953 and designated a National Natural Landmark in 1969. State Parks is the governmental body that has permanent proprietary over the Emerald Bay State Park and administers the property on behalf of the public. This park provides year-around opportunities to recreate such as camping, hiking, cycling, swimming and boating, and many more outdoor activities.

**Activities, Features, and Attributes:** The primary features and attributes within the Emerald Bay State Park that contribute towards qualifying the property for protection under Section 4(f) are Eagle Point Campground, the Rubicon Trail, Vikingsholm historic estate, Emerald Bay Underwater Park, and Fannette Island. These activities, features, and attributes have been established by the State Parks and communicated to Caltrans as essential to the recreational value of the land that Section 4(f) is designed to protect. The reason it is important to establish these features is to distinguish which portions of land within the Emerald Bay State Park contribute towards the recreational value from those that are still protected under Section 4(f) but hold less value. Identifying the activities, attributes, or features that the official with jurisdiction (i.e. State Parks) views as important establishes which elements are essential to protect from those that can be affected without resulting in adverse effects. Once these features have been established with the official with jurisdiction, it distinguishes which features hold more weighted value towards contributing to the overall function of the land for recreational purposes.

As an example, there could be a portion of the Emerald Bay State Park, such as the vegetation along SR 89 near Vikingsholm State Park, which falls within the boundaries of the Emerald Bay State Park, but does not contribute directly towards opportunities that enable recreation. This area is still protected under Section 4(f), but the impacts to this area might be assessed as less severe because this area does not directly enable or contribute towards the recreational activities (such as camping, hiking, picnicking), features, or attributes (such as Eagle Point Campground, the Rubicon Trail and Vikingsholm State Park).

**Assessment of the Effects to the Section 4(f) Property:** When assessing the impacts to recreation land, Caltrans looks at the effects to the activities, features, and attributes that qualify the land as a Section 4(f) property. All of these activities, features, and attributes within the Emerald Bay State Park are set farther within the boundaries of the recreational area, and are not immediately adjacent to the highway.

In order to evaluate the impacts, the type of construction work must be identified and the effects to the recreational activities, features, or attributes must be assessed. The following paragraphs explain the type of construction work that will occur within the Emerald Bay State Park.

In addition, this section also explains the type of work that will occur within Caltrans's right-of-way and examines the potential for any proximity impacts that could affect access into Eagle Point Campground and Emerald Bay State Park.

Based on preliminary design for this project, Caltrans anticipates the need for two easements to allow for temporary access onto land owned by the State Parks. Caltrans will have to obtain permission from State Parks for these easements. These easements are within Emerald Bay State Park, and are considered as temporary in nature - only for a time period long enough for the contractor to build an element of the project. Typically, Caltrans refers to this type of easement as a temporary construction easement. Temporary construction easements serve the purpose to allow the contractor access to an area outside of Caltrans's right-of-way in order to construct a portion of the project.

The first temporary construction easement is located at Eagle Point Campground (PM 15.37, ESL-6). The scope of work at this location involves grinding an AC to Conform to the entrance of the campground and overlay the conform with 0.2 feet of Hot Mix Asphalt to match the Original Ground surface. The temporary construction easement allows access onto land owned by the State Parks for the contractor to work and maneuver the construction equipment in an area outside of the Caltrans right-of-way.

The second temporary construction easement is located 2300 feet south of the Bayview Storage Area access road (PM 15.84, ESL-7). The scope of work at this location involves installing rock slope protection. This improvement will control erosion in areas that may experience concentrated flows. This easement is needed to allow the contractor additional room to maneuver and provide access to the area.

The Section 4(f) regulations under 23 CFR 774.13(d) recognize the need for transportation projects to access land protected by Section 4(f), and describe this action as "temporary occupancy". Under 23 CFR 774.13(d), the regulation has outlined five conditions that have been defined and must be met in order for temporary occupancy to apply under Section 4(f). If all five conditions are met, then the occupancy is considered to have minimal affects to the Section 4(f) property, and does not constitute as a "use" within the meaning for Section 4(f).

Using the five criteria listed below, Caltrans evaluated the effects of construction to Emerald Bay State Park to determine if a "use" would occur under Section 4(f) in

relation to the temporary construction easements. The following paragraphs explain how each of the five criteria can be met for temporary occupancy.

- 1) **Duration must be temporary** – The contractor will operate within the Emerald Bay State Park boundaries long enough to perform the prescribed work, and then will leave the area once the portion of the project is built. Construction within these areas would be less than the time needed to construct the entire project.
- 2) **Scope of the work must be minor, i.e. both the nature and the magnitude of the changes to the Section 4(f) property are minimal** – Construction work is related to installing or repairing drainage facilities to improve water quality at very specific locations within Emerald Bay State Park. The construction work and the contractor's equipment will be confined and restrained within these areas, and not allowed to migrate to other restricted areas. Areas of either biological or cultural concern would be identified as Environmental Sensitive Areas to be preserved and protected. Other than the temporary visual changes, visitors to the recreational areas should not notice any outlandish or harsh permanent changes to the scenery, or experience any hindrance to their recreational opportunities. None of the recreational activities, features, or attributes would be affected because they are positioned farther within the boundaries of Emerald Bay State Park. Although the construction work is occurring within portions of the Emerald Bay State Park, the scope of work is considered as minor because it involves small areas within Emerald Bay State Park that are adjacent to the roadway, and does not harm or diminish any of the activities, features, or attributes of the Section 4(f) property because these elements are avoided.
- 3) **There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis** – Although the areas denuded of vegetation could be considered as physical changes, these physical changes are temporary in nature, and are not permanent adverse physical impacts because there is an environmental commitment to re-vegetate the areas that have been cleared. Plants used to restore the area would be from a list of native plant species that was pre-approved by State Parks. Construction work would occur along the shoulders of the roadway and on the adjacent slopes. These areas adjacent to the highway do not provide the public opportunities to recreate at those locations. Work is confined to these areas and avoids key portions of the Section 4(f) property. Therefore, interference would not occur to the recreational activities (such as camping, hiking, picnicking, boating) because the public's access would remain open to the features and attributes (such as the campground, parking lot, day use areas, trails).

- 4) **The land being used must be fully restored, i.e. the property must be returned to a condition which is at least as good as that which existed prior to the project** –Replanting the areas with plants that are approved by the Department of State Parks and Recreation ensures these areas are returned to a condition that is at least as good as prior conditions.
- 5) **The must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.**

The paving operations were examined for proximity impacts at the driveways into the entrance to Eagle Point Campground and the parking lot to Vikingsholm State Park. Conforming the pavement at the driveways would cause a temporary obstruction to the entrances by causing only one side of the driveway to remain open. The ingress and egress would have to be reduced to one-way to allow the newly placed asphalt time to set before the pavement can be opened to traffic. Although this scope of work is occurring within the Caltrans's right-of-way, the proximity impacts were examined to determine if there would be an effect to the adjacent Section 4(f) property.

Complete closure would not occur to the driveway entrances, and access would remain open at all times to the entire park. The construction bid package will contain language to ensure that the contractor properly stages the work to not completely block the driveways. The public's access will not be impeded into Emerald Bay State Park; therefore, the number of fee-paying occupants will not be reduced, and the public's recreational opportunities will not be hindered. Therefore, the provisions are not triggered to constitute as a "use" under Section 4(f) for the pavement operations.

#### **Section 4(f) De Minimis Determination- Emerald Bay State Park**

Caltrans would need to acquire permanent easements from Department of States Park and Recreation.

The first permanent construction easement is located at Eagle Point Campground (PM 15.26, ESL-6). The scope of work at this location involves installing a Rock Energy Dissipater (RED) that slows down the flow of water. This easement will provide Caltrans with right-of-way within the project limits to enable the contractor to perform the work and to allow access onto the property for future maintenance purposes.

The second permanent easement is located on SR 89 approximately 1700-feet from Eagle Falls (PM 16.81, ESL sheet 11). The scope of work at this location involves installing a swale, rock slope protection and rock energy dissipater. These improvements will control erosion in areas that may experience concentrated flows and prevent pollution by maintaining and developing sheetflow conditions at the edge of shoulders.

The third, fourth, fifth, sixth and seventh permanent easements are located approximately from Eagle Falls Picnic Area to the parking lot to Vikingsholm State Park (PM 17.13- PM 17.34, ESL 12-13). The scope of work includes water quality improvements such as installation of a alternate pipe culvert, traction sand traps, RED's, rock slope protection, rock lined ditch, swales, grinding and placement of Portland Concrete Cement (PCC) Curb, conform paving and re-vegetation. These permanent easements (between 30 feet and 50 feet wide) will provide Caltrans with consistent right-of-way within the project limits to enable the contractor to perform the work and to allow access onto the property for future maintenance purposes. Since Vikingsholm State Park is owned by the Forest Service and managed by State Parks, both owners are considered officials with jurisdiction. Within these boundaries, critical or major park features and recreational activities are not occurring at these locations because the permanent easements to be acquired are adjacent to the shoulders of the roadways, and the recreational features are set further off the roadways.

The action of acquiring a permanent easement is an everlasting incorporation of recreational land into a transportation facility, and is a form of "use" under the context of Section 4(f). To assess the impacts to recreation caused by acquiring recreational land and converting it to a transportation facility, Caltrans analyzed the relative harm, damage, or interference to either recreational activities, features, or attributes within Emerald Bay State Park. Distinguishing the activities, features, or attributes of a Section 4(f) property that are important to protect from those which can be used without resulting in adverse effects is necessary when considering if a de minimis determination is an appropriate Section 4(f) approval. The Eagle Point Campground, the Rubicon Trail, Vikingsholm historic estate, Emerald Bay Underwater Park, and Fannette Island are the major contributors that establish Emerald Bay State Park's activities, features, and attributes.

Several key factors, such as the size and the location of the right-of-way acquisitions, were considered before selecting de minimis as an appropriate Section 4(f) approval. One of the reasons why a Section 4(f) de minimis determination is an appropriate approval of the use of land is because the amount of right-of-way is very limited that would be purchased from State Parks. The size of the additional right-of-way to be purchased is limited because the newly installed drainage features are relatively small design features.

Another reason why a Section 4(f) de minimis determination is an appropriate approval is because the locations of these drainage features will not affect the public's enjoyment or access to Emerald State Park. Although permanent easements are a "use" of land, the impacts to recreational opportunities are not assessed as severe or disruptive because the areas to be purchased as additional right-of-way avoid key portions of the park and do not prevent the public from experiencing or accessing the park and the

attractions within the park boundaries. Collectively, these facts were considered, along with the avoidance and measures to minimize harm, to determine that a de minimis determination is an appropriate Section 4(f) approval of the use of park or recreational land.

#### Measures to Minimize Harm:

##### Restoration of disturbed areas

- Implementation of project elements, such as sand traps or other drainage facilities, as enhancement measures for the intended purpose of water quality improvement
- Progression of staged construction to ensure access to the park will remain open to the public
- Early coordination with the officials with jurisdiction to consider their input and make design adjustments where feasible
- Avoid key portions of the property to not affect the attributes, features, or activities
- Acquisition of land at functional value

#### Public Notice and Public Input:

The public has been afforded an opportunity to review and comment on the effects of the project to Emerald Bay State Park. Public notices were prepared and posted for a 30-day public review period (December 1 – 31, 2012). At the end of the 30-day public review period, comments were not received.

#### Conclusion – Section 4(f) De Minimis Findings:

In accordance to the Section 4(f) regulations the “use” of a park or recreation area can be considered as a de minimis impact when the following conditions are met:

1. After taking into account any avoidance, minimization, mitigation, or enhancement measures, the “use” of the Section 4(f) property does not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f)
2. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes.
3. The official(s) with jurisdiction over the property are informed of Caltrans’s intent to make the de minimis impact finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes.

The purpose of this report is to demonstrate that the de minimis impact and coordination criteria are satisfied (23 CFR 774.7(b)), and the approval of the de minimis finding are documented in accordance with the documentation requirements in 23 CFR 774.7(f).

### **Emerald Bay Management Area (Forest Service)**

Property: This scenic corridor along SR 89 includes several recreational facilities such as Bayview Campground, Eagle Falls Picnic Area, Inspiration Point Vista Point, Bayview Trail and Eagle Falls Trail, which enters into Desolation Wilderness are the primary attractions within the boundaries of the Emerald Bay Management Area. The Forest Service is the governmental body that has permanent proprietary over Emerald Bay Management Area and administers the property on behalf of the public. Portions of the area are seasonally open to the public for camping, hiking, picnicking, and many more outdoor activities.

Activities, Features, and Attributes: The primary features and attributes within the Emerald Bay Management Area that contribute towards qualifying the property for protection under Section 4(f) are Bayview Campground, Eagle Falls Picnic Area, Inspiration Point Vista Point, Bayview Trail and Eagle Falls Trail. The recreational activities associated with these features include camping, hiking, picnicking, boating, and swimming. These activities, features, and attributes have been established by the Forest Service and communicated to Caltrans as essential to the recreational value of the land that Section 4(f) is designed to protect. The reason it is important to establish these features is to distinguish which portions of land within Emerald Bay Management Area contribute towards the recreational value from those that are still protected under Section 4(f) but hold less value. Identifying the activities, attributes, or features that the official with jurisdiction (i.e. the Forest Service) views as important establishes which elements are essential to protect from those that can be affected without resulting in adverse effects. Once these features have been established with the official with jurisdiction, it distinguishes which features hold more weighted value towards contributing to the overall function of the land for recreational purposes.

As an example, there could be a portion of Emerald Bay Management Area, such as the vegetation, at (PM 17.19) on the slope side of the Eagle Falls roadside parking lot, immediately adjacent to the highway, which falls within the boundaries of the Emerald Bay Management Area, but does not contribute directly towards opportunities that enable recreation. This area is still protected under Section 4(f), but the impacts to this area might be assessed as less severe because this area does not directly enable or contribute towards the recreational activities (such as camping, hiking, picnicking), features, or attributes (such as Bayview Campground, Eagle Falls Picnic Area, Inspiration Point Vista Point, Bayview Trail and Eagle Falls Trail).

Assessment of the Effects to the Section 4(f) Property: When assessing the impacts to recreation land, Caltrans looks at the effects to the activities, features, and attributes that qualify the land as a Section 4(f) property. All of these activities, features, and attributes within the Emerald Bay Management Area are set farther within the boundaries of the recreational area, and are not immediately adjacent to the highway.

In order to evaluate the impacts, the type of construction work must be identified and the effects to the recreational activities, features, or attributes must be assessed. The following paragraphs explain the type of construction work that will occur within the Emerald Bay Management Area.

In addition, this section also explains the type of work that will occur within Caltrans's right-of-way and examines the potential for any proximity impacts that could affect access into Eagle Falls Picnic Area.

Based on preliminary design for this project, Caltrans anticipates the need for two easement to allow for temporary access onto land owned by the Forest Service. Caltrans will have to obtain permission from the Forest Service for these easements. These easements are within the Emerald Bay Management Area, and are considered as temporary in nature - only for a time period long enough for the contractor to build an element of the project. Typically, Caltrans refers to these types of easements as temporary construction easements. Temporary construction easements serve the purpose to allow the contractor access to an area outside of Caltrans's right-of-way in order to construct a portion of the project.

The first temporary construction easement is located 125 feet south of Bayview Driveway (PM 16.18, ESL-9). The scope of work at this location involves placement of re-vegetation behind the barriers to prevent vehicles from parking on the slope. This turnout area is currently used as a parking area; however, because this turnout area is unpaved it causes erosion and dust issues during the spring and summer months when the turnout is heavily used. This easement is needed to allow the contractor additional room to maneuver and provide access to the area.

The second temporary construction easement is located at the Bayview Storage site (PM 16.28, ESL-9). This location is proposed to be used as a staging and storage facility for the contractor. Upon project completion, the area will be restored to a similar condition. No locations outside the project limits have been designated. Any staging locations outside the environmental study limits or the project limits will require environmental clearance performed by the contractor.

The Section 4(f) regulations under 23 CFR 774.13(d) recognize the need for transportation projects to access land protected by Section 4(f), and describe this action as "temporary occupancy". Under 23 CFR 774.13(d), the regulation has outlined five

conditions that have been defined and must be met in order for temporary occupancy to apply under Section 4(f). If all five conditions are met, then the occupancy is considered to have minimal affects to the Section 4(f) property, and does not constitute as a “use” within the meaning for Section 4(f).

Using the five criteria listed below, Caltrans evaluated the effects of construction to Emerald Bay Management Area to determine if a “use” would occur under Section 4(f) in relation to the temporary construction easements. The following paragraphs explain how each of the five criteria can be met for temporary occupancy.

1. **Duration must be temporary** – The contractor will operate within the Emerald Bay Management Area boundaries long enough to perform the prescribed work, and then will leave the area once the portion of the project is built. Construction within these areas would be less than the time needed to construct the entire project.
2. **Scope of the work must be minor, i.e. both the nature and the magnitude of the changes to the Section 4(f) property are minimal** – Construction work is related to installing or repairing drainage facilities to improve water quality at very specific locations within the Emerald Bay Management Area. The construction work and the contractor’s equipment will be confined and restrained within these areas, and not allowed to migrate to other restricted areas. Areas of either biological or cultural concern would be identified as Environmental Sensitive Areas to be preserved and protected. Other than the temporary visual changes, visitors to the recreational areas should not notice any outlandish or harsh permanent changes to the scenery, or experience any hindrance to their recreational opportunities. None of the recreational activities, features, or attributes would be affected because they are positioned farther within the boundaries of the Emerald Bay Management Area. Although the construction work is occurring within portions of the Emerald Bay Management Area, the scope of work is considered as minor because it involves small areas within the Emerald Bay Management Area that are adjacent to the roadway, and does not harm or diminish any of the activities, features, or attributes of the Section 4(f) property because these elements are avoided.
3. **There are no anticipated permanent adverse physical impacts, nor will there be interference with the protected activities, features, or attributes of the property, on either a temporary or permanent basis** – Although the areas denuded of vegetation could be considered as physical changes, these physical changes are temporary in nature, and are not permanent adverse physical impacts because there is an environmental commitment to re-vegetate the areas that have been cleared. Plants used to restore the area would be from a list of native plant species that was pre-approved by Forest Service. Construction work

would occur along the shoulders of the roadway and on the adjacent slopes. These areas adjacent to the highway do not provide the public opportunities to recreate at those locations. Work is confined to these areas and avoids key portions of the Section 4(f) property. Therefore, interference would not occur to the recreational activities (such as camping, hiking, picnicking, boating) because the public's access would remain open to the features and attributes (such as the campground, parking lot, day use areas, trails).

4. **The land being used must be fully restored, i.e. the property must be returned to a condition which is at least as good as that which existed prior to the project**—Replanting the areas with plants that are approved by the Forest Service ensures these areas are returned to a condition that is at least as good as prior conditions.
5. **The must be documented agreement of the official(s) with jurisdiction over the Section 4(f) resource regarding the above conditions.**

The paving operations were examined for proximity impacts at the driveways into the entrance to Bayview Campground and Eagle Falls Picnic Area parking lot. Conforming the pavement at the driveways would cause a temporary obstruction to the entrances by causing only one side of the driveway to remain open. The ingress and egress would have to be reduced to one-way to allow the newly placed asphalt time to set before the pavement can be opened to traffic. Although this scope of work is occurring within the Caltrans's right-of-way, the proximity impacts were examined to determine if there would be an effect to the adjacent Section 4(f) property.

Complete closure would not occur to the driveway entrances, and access would remain open at all times to the entire park. The construction bid package will contain language to ensure that the contractor properly stages the work to not completely block the driveways. The public's access will not be impeded into Emerald Bay Management Area; therefore, the number of fee-paying occupants will not be reduced, and the public's recreational opportunities will not be hindered. Therefore, the provisions are not triggered to constitute as a "use" under Section 4(f) for the pavement operations.

#### **Section 4(f) De Minimis Determination – Emerald Bay Management Area**

Caltrans would need to acquire permanent easements from the Forest Service.

The first (PM 16.31, ESL-9), second (PM 16.48, ESL-10) and third (PM 16.62, ESL-10) permanent easements are located north of the Bayview Storage site entrance. The scope of work at these locations involves installing Rock Energy Dissipater REDs. These improvements will slow down the flow of water. These permanent easements will enable the contractor to perform the work and to allow access onto the property for future maintenance purposes. Although within the boundaries of Emerald Bay

Management Area, critical or major recreational features and recreational activities are not occurring at these locations because this area is adjacent to the shoulder of the roadway, and the recreational features are set further off the roadway

The fourth permanent easement is located 400 feet south of the Eagle Falls Viaduct (PM 17.87, ESL-15). The scope of work at this location involves installing rock slope protection. This improvement will control erosion in areas that may experience concentrated flows. This permanent easement would enable the contractor to perform the work and to allow access onto the property for future maintenance purposes. Although within the recreational boundaries, critical or major park features and recreational activities are not occurring at this location because this area is adjacent to the shoulder of the roadway, and the recreational features are set further off the roadway.

The fifth, sixth, seventh, eighth and ninth permanent easements are located approximately from Eagle Falls Picnic Area to the parking lot to Vikingsholm State Park (PM 17.13- PM 17.34, ESL 12-13). The scope of work includes water quality improvements such as installation of a alternate pipe culvert, traction sand traps, RED's, rock slope protection, rock lined ditch, swales, grinding and placement of Portland Concrete Cement (PCC) Curb, conform paving and re-vegetation. These permanent easements (between 30 feet and 50 feet) will provide Caltrans with consistent right-of-way within the project limits to enable the contractor to perform the work and to allow access onto the property for future maintenance purposes. Since Vikingsholm State Park is owned by the Forest Service and managed by State Parks, both owners are considered officials with jurisdiction. Within the Vikingsholm State Park boundaries, critical or major park or management area features and recreational activities are not occurring at these locations because these areas are adjacent to the shoulders of the roadways, and the recreational features are set further off the roadways.

The action of acquiring permanent easement is an everlasting incorporation of recreational land into a transportation facility, and is a form of "use" under the context of Section 4(f). To assess the impacts to recreation caused by acquiring recreational land and converting it to a transportation facility, Caltrans analyzed the relative harm, damage, or interference, to either recreational activities, features, or attributes within Emerald Bay Management Area. Distinguishing the activities, features, or attributes of a Section 4(f) property that are important to protect from those which can be used without resulting in adverse effects is necessary when considering if a de minimis determination is an appropriate Section 4(f) approval. The Bayview Campground, Eagle Falls Picnic Area, Inspiration Point Vista Point, Bayview Trail and Eagle Falls Trail, are the major contributors that establish Emerald Bay Management Area's activities, features, and attributes.

Several key factors, such as the size and the location of the right-of-way acquisitions, were considered before selecting de minimis as an appropriate Section 4(f) approval. One of the reasons why a Section 4(f) de minimis determination is an appropriate approval of the use of land is because the amount of right-of-way is very limited that would be purchased from State Parks and the Forest Service. The size of the additional right-of-way to be purchased is limited because it is for the permanent maintenance of newly installed drainage features. The locations of these drainage features will not affect the public's enjoyment or access to Emerald Bay Management Area. Although permanent easements are a "use" of land, the impacts to recreational opportunities are not assessed as severe or disruptive because the areas to be purchased as additional right-of-way avoid key portions of the park and do not prevent the public from experiencing or accessing the park and the attractions within the boundaries of Emerald Bay Management Area. Collectively, these facts were considered, along with the avoidance and measures to minimize harm to determine that a de minimis determination is an appropriate Section 4(f) approval of the use of park or recreational land.

#### Measures to Minimize Harm:

##### Restoration of disturbed areas

- Implementation of project elements, such as sand traps or other drainage facilities, as enhancement measures for the intended purpose of water quality improvement
- Progression of staged construction to ensure access to the park will remain open to the public
- Early coordination with the officials with jurisdiction to consider their input and make design adjustments where feasible
- Avoid key portions of the property to not affect the attributes, features, or activities
- Acquisition of land at functional value

#### Public Notice and Public Input:

The public has been afforded an opportunity to review and comment on the effects of the project to Emerald Bay Management Area. Public notices were prepared and posted for a 30-day public review period (December 1 – 31, 2012). At the end of the 30-day public review period, comments were not received.

#### Conclusion – Section 4(f) De Minimis Findings:

In accordance to the Section 4(f) regulations the "use" of a park or recreation area can be considered as a de minimis impact when the following conditions are met:

1. After taking into account any avoidance, minimization, mitigation, or enhancement measures, the “use” of the Section 4(f) property does not adversely affect the activities, features, and attributes that qualify the property for protection under Section 4(f)
2. The public has been afforded an opportunity to review and comment on the effects of the project on the protected activities, features, and attributes.
3. The official(s) with jurisdiction over the property are informed of Caltrans’s intent to make the de minimis impact finding based on their written concurrence that the project will not adversely affect the activities, features, and attributes.

The purpose of this report is to demonstrate that the de minimis impact and coordination criteria are satisfied (23 CFR 774.7(b)), and the approval of the de minimis finding are documented in accordance with the documentation requirements in 23 CFR 774.7(f).

DRAFT